

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 18-80165-CR-MIDDLEBROOKS**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**JUSTIN MORGAN WAYNE,**

**Defendant,**

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**DEFENDANT'S MEMORANDUM IN AID OF SENTENCING**

**I. INTRODUCTION**

On August 30, 2018, Justin Wayne (herein after referred to as "Justin") pled guilty to Conspiracy to Commit Healthcare Fraud in violation of 18 USC § 1347 and 1349. He is presently scheduled to be sentenced on November 1, 2018.

Probation has calculated Justin's Total adjusted Offense Level to be 24. However, pursuant to the plea agreement entered herein, the parties have agreed to recommend a variance to a total adjusted offense level of 23, with a sentence at the low end of the advisory guideline sentencing range of 46 to 57 months. It is also anticipated that the government will ultimately file a Motion for Downward Departure due to Justin's substantial assistance to the government. This Memorandum in Aid of Sentencing is being filed pursuant to Rule 32 of the Federal Rules of Criminal Procedure to give the Court greater insight into Justin's history and background for the purposes of understanding the basis for the parties' joint sentencing recommendation and to assist the Court's required independent analysis pursuant to 18 U.S.C. 3553(a).

I. **Justin Wayne's Background and History**

Justin Wayne's life is defined by his generosity and kindness of spirit, his warmth, and his compassion. Those who know him well, those who have spent time with him, tell of an exceptionally kind and good-hearted man who has touched the lives of many people.

Justin's cousin, Tracy Brown, writes:

Growing up Justin was a large than life person to me. He was tall, good-looking, extremely bright, and a professional baseball player. You might think someone with these traits would be egotistical and aloof; but Justin always disarmed people with his smile and generosity. In our single days, I loved introducing him to friends of mine because he truly had it all. So much so that I introduced him to my closet friend and they dated briefly (and only didn't last because of the distance). Justin was (and still is) the guy who held the door open for women, always picked up the bill, and was always there when you needed someone to talk to. He is kind and caring and compassionate. Despite his good looks and impressive bio, Justin was never the guy interested in quick flings with girls. From our early twenties, Justin longed for a deep connection and relationship. He knew he wanted to be a good husband and father. Likewise, when I was finding my way in my 20s, Justin is who I would call when I needed advice or support. Whether it was about dating, or when I was debating going back to school for social work, Justin was always there. He was always so thoughtful and showed good judgment.

Exhibit "C", annexed hereto and incorporated by reference.

Born and raised in a middle-income neighborhood in Honolulu, Hawaii, Justin was one of three boys raised in an extremely close family. He and his two brothers were each accomplished athletes though Justin particularly excelled in baseball and soccer. Justin was ultimately accepted into the highly selective Punahou School throughout his formative years. (See Letters of support for Justin submitted herewith as Composite Exhibit A-W, annexed hereto and incorporated by

reference)).

Due to his unique combination of intelligence and talent, Justin was accepted into Stanford University in California, where he participated in rigorous academics and played baseball. Then, in the summer of 2000, he was selected by the Montreal Expos as the fifth pick of the first round of the professional baseball draft. Justin played "Class A" summer ball in Jupiter, Florida, and then completed his final two classes at Stanford University, receiving an undergraduate degree in economics the follow year. During that time, Justin bought a condominium in Jupiter, Florida, but he continued to split his time between South Florida and Honolulu so that he could spend time with his family.

Justin was called up to the major leagues in September of 2002 year. He then bounced between "AAA" ball and the major leagues as a starter and relief pitcher until the Marlins released him in the spring of 2005. He had some minor stints with other major league clubs but was retired from baseball by 2006. He had been seeing a sports psychologist; but admittedly, he just could not throw enough strikes.

Despite being a professional athlete, Justin never let his status as a professional ball player affect his sense of humility or compassion. His Aunt, Arlene Pokrass, observes:

I got to know Justin even better once he started to play in the baseball minor leagues. My husband and I were able to go to many of his games that were in Pennsylvania, New York, New Jersey and Connecticut. This is where he showed me what a sweet caring person he is.

After each game in the minor leagues, he would come out of the clubhouse where the fans would gather hoping to get signatures of the players. As he was going back into the clubhouse after a game in New

Jersey, I came up to him to ask a favor. There was an 8 year old boy who was afraid to be in a middle of a crowd due to Autism. When I pointed him out to Justin, Justin turned around and went out to meet and talk with this child. Watching the face on this child was priceless.

Another time, Justin was playing for a team in New Jersey. The team would come to Long Island to play. While the team would stay at a hotel, Justin chose to stay with my husband and me instead. On one of his weekends with us, Justin had a free afternoon and decide to come to the beach with me. Some of the younger kids (they knew he played professional ball) came over to meet Justin. Justin then proceeded to play catch with them and to teach them how to throw the ball. Once again he showed us the caring person that he was and still is.

Exhibit "Q", annexed hereto and Incorporated by reference.

At the conclusion of his baseball career, Justin remained in Jupiter, Florida.<sup>1</sup> He explored various career opportunities from 2006 through 2011, ultimately selling insurance and securities for New York Life from 2011 and 2014. During this time, Justin continued to reveal his compassion for others. Indeed, Constantine S. Hatzivassiliou, details how Justin supported his then girl-friend and her family, committing to pay off her and her brother's law-school debt. Justin Continued to honor this financial commitment even when he and his girl-friend broke up. Mr. Hatzivassiliou writes:

I had the pleasure of meeting Justin Wayne for the first time over a decade ago when I was assigned as his financial account during my tenure at Bernstein Global Wealth Management. Within months of meeting Justin, he called me seeking advice regarding a personal

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<sup>1</sup> His parents bought a house in South Florida in 2005 to be close to Justin and traveled between Florida and Hawaii until 2018, when they finally made Florida their permanent home.

financial matter. During our meeting, he shared that he wanted to better understand his ability to financially support the woman he was dating (Jennifer) and her immediate family (Brother Josh and Mom Patty).

In the beginning of the analysis, it was evident that Justin was being incredibly generous with his limited finances. Justin created and implemented a plan to pay off existing Law School debt for both Jennifer and Josh and advance pay future law school tuition. Justin was supporting Jennifer who was suffering from severe vertigo and was also subsidizing Patty due to her debilitating autoimmune disease. I repeatedly questioned Justin's decision to assume their liability since it wasn't financially prudent; however, he insisted it was the right thing to do considering all of the issues they were facing. It was a completely selfless act that forever changed my perception of the "stereotypical professional athlete".

Exhibit "L", annexed hereto and Incorporated by reference.

Letter after letter submitted herewith describes Justin as a loving, kind, warm and generous man. Both relatives and friends describe him as a mentor and role model to them and their children.

Long-time friend Matthew Bolte writes:

I have known Mr. Justin Wayne since 2008. We meet at a gym in Jupiter when he was getting ready to make a return back to the Majors and I was getting ready for the college season. From the beginning Justin and I became good friends and over a short period Justin became a brother to me and another son to my parents. Justin is a type of person that will give you his shirt off his back. He literally did this for me. Shortly after we became friends I was getting ready to go through my first baseball season in Cleveland, Ohio. Justin went through all his old baseball gear and gave me his winter gear knowing that I didn't have any. Because of this my wife and I have asked Justin to be the Godfather of our two sons and if anything ever happened to me and my wife that he would raise my boys as his own. This is a true friend.

For those that don't know Mr. Justin Wayne, I can personally

attest that he is a man of kindness, and generosity. He's a person that always tends to put other people's needs first ahead of his own. I have been truly blessed to be able to call Justin Wayne not only a friend but a brother over the last 10 years.

Exhibit "A", annexed hereto and incorporated by reference.

Marcos Gonzalez also writes:

The way I met Justin in 2008 illustrates perfectly who he is as a person. One night I was having dinner at a local restaurant and met by coincidence his brother Hawk eye. When our conversation turned to how much I enjoyed coaching my son's little league team at Phipps Park in West Palm Beach, Hawkeye mentioned that his brother had played Major League Baseball for the Florida Marlins. As I was leaving the restaurant that night, understanding that it would be a long shot, I mentioned to Hawkeye that it would be wonderful if a Major Leaguer like his brother could come and speak and work with the players I coached at Phipps Park. Not thinking Justin would be interested in giving his time to someone he had never met, I was shocked when, the following morning, I received a call from Justin introducing himself and offering to work with the kids.

A few days later, Justin came to the park and spent almost 3 hours talking to the young kids about baseball fundamentals, and his experiences as a baseball player at Stanford University and with the Florida Marlins. The kids were incredibly excited and listened to every word spoken by Justin. In that group of young players was my 7 year-old son Marcos Jr. Justin has remained an important part of my son's life since meeting him at Phipps Park. After that initial meeting, he not only continued working on Marcos' pitching fundamentals, but more importantly, has always over the years given him advice about the importance of academics and developing as a quality young man.

Although Marcos Jr. is no longer playing competitive baseball, he has excelled in school academically, and has aspirations of attending Stanford University just like Justin.

Marcos Jr's. academic achievements are in no small part attributable to the mentoring of Justin. I was particularly excited when Justin married his wonderful wife Ashley, and shortly thereafter had their first-born Myles. More recently they've been blessed with the birth of their daughter Leilana. I've often spoken to Justin about the positive impact he's had in my son's life, and how I think he will be an excellent father.

Exhibit "K", annexed hereto and incorporated by reference.

***Family***

As described by so many of his family members, Justin comes from a particularly close family and couldn't wait to start a family of his own. In November 2014, Justin met Ashley Glassman, a pre-school teacher. They were married in December 2015. The couple has a wonderful marriage with two young children: a son, Myles, who was born in 2016, and a baby girl, Leilana, who was born just this year. Ashley has stopped teaching to stay home and raise their children. She has stood by Justin in the face of this extremely difficult time.

Indeed, Justin has the full support of his entire family. His cousin, Jodi Brown writes:

Over the past 10 years, I've watched Justin fall in love, struggle with hard life decisions, end relationships, fall apart, rebuild himself, fall in love again, marry a beautiful woman, have children, and become the family man he dreamed of being. It's been tough hearing about the pain and personal disappointment he's been going through. He is his toughest critic. I know in my heart that he will not allow these charges to define him and that he will persevere. We will also not allow this situation to define the entirety of the man he is. He will continue to have my support as he and his family navigate this difficult time.

Exhibit "B", annexed hereto and Incorporated by reference.

#### **History of Alcohol Abuse and request for a Recommendation to RDAP**

Sadly, despite his many blessings, and perhaps due to his particularly sensitive nature, Justin has grappled with alcohol addiction from a very young age. He began drinking socially with friends in high school, usually beer and apparently confined to weekends. Then, throughout college, Justin turned to alcohol to deal with the stress associated with highly competitive academics and athletics. By the time Justin was playing professional baseball, he was turning to alcohol to deal with the stress of professional athletics, to cope with injuries, to adjust socially at parties, as well as when he was alone. By the time Justin left baseball, he was a full-blown addict, often intoxicated on beer, vodka and rum.

When his baseball career ultimately ended and Justin was forced to reinvent himself, he

fell into a deep depression and suffered from anxiety. Through his years with New York Life and Smart Lab, Justin admits that he drank from 5 to 10 drinks a day and was often intoxicated. Since his arrest herein, Justin has admitted to and confronted his addiction. Justin is now fully committed to his sobriety and would certainly benefit from a continuation of his addiction Counseling.

Justin respectfully asks the Court to recommend to the Bureau of Prisons (BOP) that he be considered as a candidate for the RDAP program. Justin acknowledges and understands that this is only a recommendation with no guarantee that he will be accepted into the program. However, he respectfully submits that the tools learned in RDAP would assist him to readjust once he is released from prison. Most importantly, he recognizes his problem and wishes to effectively deal with it so that he can be a better father/husband/member of society.

**II. Booker and its Progeny Provides the Court with the Discretion to Impose a Variance Sentence as Proposed by the Parties**

As the Court well knows, pursuant to *United States v. Booker*, 543 U.S. 220, 245-67 (2005), a court is now unencumbered in its ability “to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” *Gall v. United States*, 552 U.S. 38, 53 (2007) (quoting *Koon v. United States*, 518 U.S. 81 (1996)). 18 U.S.C. § 3553(a)(2), requires sentencing courts to consider not only the advisory Guidelines range, but also the facts of the specific case through the lens of seven factors, including:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed--
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational



- training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
  - (4) the kinds of sentence and the sentencing range established;
  - (5) any pertinent [Sentencing Commission] policy statement;
  - (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
  - (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a)(1)-(7)

Against this backdrop of factors, Justin respectfully submits that a variance sentence to the low end of the guideline range of a total adjusted offense level of 23 (46-57 months) as recommended by the parties is appropriate in his case, as further described below.

***A. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant***

A defendant's criminal conduct must be considered in the context of his entire life. As Judge Rakoff noted in *United States v. Adelson*, 441 F. Supp. 2d 506 (S.D.N.Y. 2006):

But, surely, if ever a man is to receive credit for the good he has done, and his immediate misconduct assessed in the context of his overall life hitherto, it should be at the moment of his sentencing, when his very future hangs in the balance. This elementary principle of weighing the good with the bad, which is basic to all the great religions, moral philosophies, and systems of justice, was plainly part of what Congress had in mind when it directed courts to consider, as a necessary sentencing factor, 'the history and characteristics' of the defendant.

*Id.* at 513–14.

Such a weighing of the good with the bad reveals that Justin's criminal conduct is at odds with the rest of his life.

***Acceptance of Responsibility***

Justin immediately expressed remorse and accepted responsibility for his involvement in

this offense to the government. He has been actively cooperating with the government's investigation, and as referenced above, *infra*, it is anticipated that the government will file a Motion for Downward Departure due to his substantial assistance,

Additionally, Justin has agreed to make full restitution, joint and several, with his co-defendants at the time of sentencing. The Probation Office and the parties agree that the amount owed as restitution for the Smart Lab fraud is \$2,897,389.50. *See* paragraphs 12 and 13 of the written Plea Agreement and the PSR ¶136. Justin offers no excuses for his conduct, fully accepts responsibility for his actions herein, and is doing all he can to rectify the harm he has caused.

***B. The Need for the Sentence Imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense***

It is respectfully submitted that the parties' joint recommendation herein accomplishes the objectives of sentencing enunciated above. It is acknowledged that sentences are designed to, among other things, punish and promote respect for the law. However, it is respectfully submitted that the incarceration facing Justin herein is not the only form of punishment faced by him. He is also facing additional penalties and hardships that will undoubtedly accompany his felony conviction.

The collateral consequences of a felony conviction are harsh in and of themselves. Indeed, in a recent opinion, Judge Fredrick Block concluded that, "sufficient attention has not been paid at sentencing... to the collateral consequences facing a convicted defendant. And I believe that judges should consider such consequences in rendering a lawful sentence." *United States v. Nesbeth*, Case No. 1:15-cr-00018, 2016 WL 3022073, at \*1 (E.D.N.Y May 24, 2016)(varying downward from guideline range of 33 to 44 months imprisonment to one-year of probation for a drug defendant based in part on the number of statutory and regulatory consequences he faced

as a convicted felon); *see also* Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *Invisible Punishment: The Collateral Consequences of Mass Imprisonment* (Marc Mauer & Meda Chesney-Lind eds., 2002).

For Justin, the most severe aspect of the prospective sentence herein is, of course, the fact that he will not be available to assist his wife in raising their two young children, either financially or emotionally, and that he will miss a significant period of their lives. This collateral consequence will be devastating for both Justin and his children. It is well documented that children with fathers who have been incarcerated become “collateral damage”. Such children are significantly more likely than other children to be expelled or suspended from school (23 % compared with 4 %). See Pew Charitable Trusts Report “Collateral Costs: Incarceration’s Effect on Economic Mobility” (2010) at page 5. Parental incarceration also “contributes to higher rates of delinquency, mental illness, and drug abuse, and reduces level of school success and later employment among their children.” Unlocking America, Why and How to Reduce America’s Prison Population (JFA Institute, November 2007) at page 32. This is reason enough for the Variance agreed to by the parties.

It is accordingly respectfully urged that the Court consider all collateral consequences of punishment in considering the propriety of the parties’ agreement. In *Nesbeth*, the court asserted that the collateral effects of a criminal conviction can be “devastating” to a defendant. *Nesbeth*, 2016 WL 3022073, at \*1.

***To afford adequate deterrence to criminal conduct***

The principal of general deterrence is based on the unsupported premise that prison sentences deter crime. This faulty conception has resulted in mass incarceration.

For the past 40 years, the United States has been engaged in a vast, costly

social experiment. It has incarcerated a higher percentage of its people, and for a longer period, than any other democracy. In fact, with 5 percent of the world's population, the U.S. is home to 25 percent of its prisoners. There are five times as many people incarcerated today than there were in 1970. . . [The] archipelago of prisons and jails costs more than \$80 billion annually — about equivalent to the budget of the federal Department of Education.

Dr. Oliver Roeder et al., *What Caused the Crime Decline?*, Brennan Center for Just., 22-23 (Feb. 12, 2015), *available at* <https://www.brennancenter.org/publication/what-caused-crime-decline>.

The condition of mass incarceration is especially troubling since there is no correlation between punishment and reductions in crime. *See id*; *see also* Gary Kleck and J.C. Barnes, *Deterrence and Macro-Level Perceptions of Punishment Risks: Is There a "Collective Wisdom"?*, 59 *Crime & Delinquency* 1006, 1031-33 (2013). Kleck and Barnes' study concludes:

there is generally no significant association between perceptions of punishment levels and the actual levels of punishment that the criminal justice system achieves. This in turn implies that increases in punishment levels do not routinely reduce crime through general deterrence mechanisms, because the fundamental link between actual punishment levels and perceptions of punishment levels appears to be weak to nonexistent.

(*Id.* at 1031). The United States Department of Justice agrees with the conclusion that incarcerating defendants is not an effective means of deterrence. *See* U.S. Dept. of Justice, Nat'l Inst. of Justice, *Five Things About Deterrence* (July 2014). In fact, the Department of Justice finds that even increasing the severity of punishment does little to deter punishment. (*See id.*); *see also* Hannah Arendt, *Eichmann in Jerusalem*, Epilogue (1963) ("No punishment has ever possessed enough power of deterrence to prevent the commission of crimes"). In this regard, it is urged that the restitution herein, coupled with the collateral consequences to Justin are more than sufficient to serve as a warning to all considering such conduct.

***C. To protect the public from further crimes of the defendant (Specific Deterrence)***

The sentence agreed upon herein by the parties amply satisfies the goal of specific

deterrence. Justin has no prior criminal history, and nothing suggests he is at risk of recidivism.

In sum, Justin does not need a lengthy sentence to encourage him to be a positive asset to the community. Nor does the empirical evidence establish a relationship between sentence length and specific deterrence, regardless of the type of crime. *See* National Institute of Corrections, *Myths and Facts, Why Incarceration is Not the Best Way to Keep Communities Safe* (2016). Indeed, studies repeatedly affirm that lengthy sentences do not satisfy the enunciated goals of sentencing other than punishment. The 2016 study by the National Institute of Corrections (hereafter, “NIC Study”) establishes three critical tenets. First, incarceration has a negligible impact on crime prevention. Instead, a longer prison sentence may actually lead to a greater risk of recidivism. There is strong evidence that prison—by disrupting education and employment, reducing prospects for future employment, weakening family ties and exposing less serious offenders to older more serious offenders—leads to increased recidivism. *See The Criminogenic Effects of Imprisonment: Evidence from State Panel Data 1974-2002*, 6 *Criminology & Public Policy* 589 (2007). Moreover, harsh penalties do not improve the long-term outcomes of the offender. *See* NIC Study; *See also* Friedrich Nietzsche, *The Genealogy of Morals*, essay 2, aph. 14 (1887) (“All in all, punishment hardens and renders people more insensible; it concentrates; it increases the feeling of estrangement; it strengthens the power of resistance”). Finally, the study concludes that community correction programs are more effective in reducing recidivism. *Id.* at 5.

Furthermore, Justin is in a Criminal History Category of I. For all male offenders in Criminal History Category I, the recidivism rate is 15.2%. *See, e.g., Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* at 28 (May 2004). Justin certainly does not appear to be in the minority of that group.

Indeed, there is tremendous support in the congressional record and in caselaw for a variance for defendants like Justin who have no criminal history and are of a mature age. *See* 28 U.S.C. § 994(j); *United States v. Ward*, 814 F. Supp. 23, 24 (E.D. Va. 1993) (granting departure based on defendant's age as first-time offender since guidelines do not "account for the length of time a particular defendant refrains from criminal conduct" before committing his first offense); *see also United States v. Paul*, 561 F.3d 970, 973 (9th Cir. 2009) (where defendant convicted of embezzlement and faced a guidelines sentence of 10-16 months, sentence of 15 months was unreasonably high in part because defendant was a first-time offender with no criminal record whatsoever); *United States v. Autery*, 555 F.3d 864 (9th Cir. 2009) (district court's *sua sponte* variance to probation not unreasonable in part because guidelines "did not fully account for [the defendant's] complete lack of criminal history"); *United States v. Urbina*, slip op., 2009 WL 565485, \*2-3 (E.D. Wis. Mar. 5, 2009) (considering low risk of recidivism indicated by defendant's lack of criminal record, positive work history, and strong family ties);

#### ***E. The Kinds of Sentences Available***

As recognized in *Gall*, district courts "may not presume that the Guidelines range is reasonable." 552 U.S. at 49, 128 S. Ct. at 597. Thus, mitigating circumstances and substantive policy arguments that were formerly irrelevant in only the most unusual cases are now potentially relevant in every case. Indeed, the guidelines pose a risk of falsely provide a promise of predictability and fairness. Judge Presnell from the Middle District of Florida observed:

Criminal behavior can fuel public outcry and drive broad legislative and executive agendas to get "tough on crime." But how does that translate to specific instances? If you take a matrix to factor offense severity, overlay it with mandates born of popular outrage, and tailor it purportedly to address almost every eventuality, you get "justice" dictated in advance, marked by visceral condemnation, and based on

the pretense of omniscience.

*United States v. Williams*, 372 F.Supp.2d 1335, 1337-1338 (M.D. Fla. 2005) (Presnell, J.).<sup>2</sup>

It is respectfully submitted that as a society, we are beginning to recognize that punishment is not the paramount goal of sentencing. All goals of sentencing, including rehabilitation and reintegration, promoting cooperation with law enforcement, promoting restitution, promoting family unity, etc., ultimately serve the community at large and the individual alike. In this case, a variance sentence at the low end of Offense Level 23, as agreed to by the parties, would serve to adequately punish Justin, while also reflecting the other enunciated goals of sentencing including rehabilitation and reinforcing Justin's community and family ties.

#### CONCLUSION

As the foregoing establishes, the circumstances presented in Justin's case warrant the variance agreed to by the parties to the low end of offense level 23. Because the decision in *Booker* has made the Guidelines advisory and the parsimony clause of 18 U.S.C. § 3553(a) the paramount consideration, Justin respectfully submits that such a variance is appropriate.

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<sup>2</sup> Although *Williams* was reversed by the Eleventh Circuit in *United States v. Williams*, 456 F.3d 1353 (11th Cir. 2006), the Eleventh Circuit's decision was overruled by the United States Supreme Court. See *Kimbrough v. United States*, 552 U.S. 1353 (2010).

**Dated:** October 29, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 29, 2018, I electronically filed the foregoing document with the Clerk of Court using CM/EC and that the foregoing document is being served this day on all counsel of record or *pro se* parties, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Richard G. Lubin

**RICHARD G. LUBIN**